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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 418 (DLC)

5 GINA MESTRE,

6 Arraignment

7 Defendant.

8  
9 New York, N.Y.  
August 16, 2023  
10 2:30 p.m.

11 Before:

12 HON. DENISE COTE,

13 U.S. District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the  
Southern District of New York

17 DOMINIC A. GENTILE

JAMES LIGTENBERG

18 Assistant United States Attorney

19 MATTHEW J. KLUGER

Attorney for Defendant

20 Also Present:

21 Myles McKenna, N.Y.P.D.

22 Dayshawn Bostic, U.S.P.O.

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(Case called; appearances noted)

THE COURT: Thank you.

I will take a report from the government.

MR. GENTILE: The defendant was arrested yesterday at 5:30 p.m. in Westchester County. She's charged with four counts: Racketeering conspiracy, conspiracy to obstruct justice; conspiracy to obstruct an official proceeding, and accessory after the fact to murder in aid of racketeering.

If the Court would like, I can provide an overview of the case and some background.

THE COURT: No. It's not necessary.

When was the indictment?

MR. GENTILE: The indictment was yesterday.

THE COURT: So the indictment was filed yesterday?

MR. GENTILE: It was, your Honor. Yes.

THE COURT: Was there a previous arrest on the complaint?

MR. GENTILE: No, there wasn't, Judge.

THE COURT: This is the defendant's first appearance in court?

MR. GENTILE: It is, your Honor.

THE COURT: Thank you.

So I'll proceed with an arraignment.

Please stand.

Ms. Mestre, have you received a copy of the

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1 indictment, 23 CR 418?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you wish me to read it to you?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: How do you plead: Guilty or not guilty?

6 THE DEFENDANT: Not guilty.

7 THE COURT: You may be seated.

8 I'm signing an order pursuant to Rule 5(f).

9 I advise the government in the presence of defense  
10 counsel of its obligations pursuant to Rule 5(f), as detailed  
11 in the order I've just signed, which will be docketed. A  
12 failure to abide by its obligations pursuant to that order, and  
13 pursuant to *Brady* and its progeny, may result in any number of  
14 consequences that are just under the circumstances.

15 Mr. Gentile, did you hear what I just said?

16 MR. GENTILE: I did, your Honor.

17 The government is aware of its obligations under *Brady*  
18 and its progeny, and will comply with those obligations as they  
19 arise.

20 THE COURT: Thank you.

21 So, normally, I have a chance to issue a scheduling  
22 order, and the parties have a chance to confer in advance of  
23 today's conference or of the conference in which defendant is  
24 arraigned about scheduling of the case, including the month  
25 that I should be looking at for a trial.

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1 Have the parties so conferred?

2 MR. GENTILE: We have, your Honor.

3 THE COURT: Good. So let me proceed then with other  
4 preliminaries.

5 No time has expired under the Speedy Trial Act, except  
6 potentially for one day, but I don't think that at all, so my  
7 calculation currently is zero days have elapsed on the Speedy  
8 Trial clock.

9 MR. GENTILE: That's correct, your Honor.

10 THE COURT: What is the government's proposal for  
11 producing discovery materials?

12 MR. GENTILE: Your Honor, there are essentially two  
13 tranches of materials that the government will produce to the  
14 defendant. The first tranche involves the enterprise, the  
15 Shooting Boys, in which we allege that the defendant was  
16 associated. That case culminated in an indictment that was  
17 heard in front of Judge Rakoff back in March of 2022. That  
18 case encompassed close to two terabytes of information in that  
19 case, and in the subsequent case that was brought against other  
20 members of the Shooting Boys. Government and defense counsel  
21 employed a discovery coordinator in both cases.

22 The discovery coordinator is in possession of all of  
23 the government productions in both of those cases, and could  
24 produce that material to the defendant rather quickly should  
25 the defendant wish to go forward with the discovery coordinator

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1 in this case. That's the first tranche of information.

2 The second tranche is the information specific to  
3 defendant's conduct and actions that are alleged in the  
4 complaint. That comes to about 27 gigabytes of data we can  
5 begin to produce immediately, depending on how we proceed with  
6 whether we use the discovery coordinator or not.

7 THE COURT: Mr. Kluger, have you had a chance to  
8 reflect on these issues?

9 MR. KLUGER: To be completely honest, your Honor,  
10 obviously I was here this morning. I've only had the case for  
11 a couple of hours. I'm trying to learn as much as we can about  
12 it. I don't necessarily think we need a discovery coordinator.  
13 It's just me on this case. I understand there's a lot of  
14 discovery, but a discovery coordinator would probably just  
15 delay the turning over of that discovery.

16 But it does sound voluminous. I'm not in a position  
17 yet to say how long it's going to take me to get through it. I  
18 don't generally take a huge amount of time. I want to move  
19 things along, but I have two terabytes of information. I have  
20 a lot of information, and I don't necessarily know what motions  
21 need to be decided or are appropriate yet.

22 It's still a little -- as your Honor pointed out  
23 before, usually we have a couple weeks to come in before we set  
24 a trial schedule --

25 THE COURT: Well, I'm sort of asking a different

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1 question. Mr. Gentile has said one issue you have to decide is  
2 whether to use a discovery coordinator or not.

3 Do you know yet what your position is on that issue?

4 MR. KLUGER: In this particular case, since the  
5 discovery coordinator already has discovery, it shouldn't slow  
6 things down, so it would probably make sense to use the same --  
7 if I could ask the government who the discovery coordinator was  
8 in the case?

9 MR. GENTILE: Julie D. Alameda.

10 MR. KLUGER: Right. So she's fairly familiar with the  
11 court, and I know her, so if she already has the discovery in  
12 the other case, she should be able to get it to me fairly  
13 quickly.

14 THE COURT: All right. So understanding Mr. Kluger is  
15 going to use the services of the discovery coordinator to  
16 obtain at least the enterprise discovery, what is the  
17 government's proposal on timing?

18 MR. GENTILE: For the discovery coordinator, that  
19 should go out within the next two days, actually, but I believe  
20 the discovery coordinator requires a drive be sent to them by  
21 defense counsel, so whatever time that takes, the discovery  
22 coordinator should be able to produce the first tranche of  
23 information.

24 The second tranche would have to be produced to the  
25 discovery coordinator, and, in turn, she would produce it to

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1 the defendant. We would ask the Court for about 14 days to  
2 produce that second tranche of information.

3 THE COURT: So I'm going to say September 1 for  
4 production of discovery.

5 Mr. Gentile, you may need to get me an appropriate  
6 order with respect to the use of the discovery coordinator in  
7 this case.

8 MR. GENTILE: Your Honor, I believe that is actually  
9 provided by defense counsel, but we're happy --

10 THE COURT: Okay.

11 MR. GENTILE: -- to follow whatever directions --  
12 because I believe the coordinator actually works for the  
13 defendant.

14 THE COURT: Well, it does, yes. The coordinator works  
15 for defense counsel.

16 So I have no idea what order Judge Rakoff signed, but  
17 the government probably has access to that order that Judge  
18 Rakoff signed.

19 Am I right?

20 MR. GENTILE: Yes. We're in possession of that.

21 THE COURT: All right. Can you give that to  
22 Mr. Kluger, too, please?

23 MR. GENTILE: Certainly, Judge.

24 THE COURT: So, Mr. Kluger, I have my own form for  
25 discovery coordinator. I'll try to get you a proposed order.

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1 You'll have a copy of Judge Rakoff's order, and you can make  
2 any proposal you wish to make with respect to modifications of  
3 my proposed order.

4 MR. KLUGER: That's fine, Judge.

5 THE COURT: How long does the government expect the  
6 trial to last?

7 MR. GENTILE: We would say that two weeks would be a  
8 safe assumption, Judge.

9 THE COURT: What would be the principal sources of the  
10 government's evidence at trial?

11 MR. GENTILE: So we are in possession of -- in  
12 addition to that first tranche of information about the  
13 enterprise, we have 26 responses from subpoenas for cell  
14 phones, or the call records for those phones, including some  
15 cell site data. We have returns for social media accounts, for  
16 Instagram and Facebook, approximately four accounts.

17 THE COURT: I'm asking what the principal sources of  
18 the government's evidence at trial would be, not what discovery  
19 you're going to produce.

20 MR. GENTILE: The principal sources of evidence would  
21 be statements that the defendant made over the course of 6 or 8  
22 months in Instagram communications, in text messages, testimony  
23 from cooperating witnesses, multiple cooperating witnesses, and  
24 testimony from law enforcement witnesses as well. That would  
25 be the principal source of the government's evidence. And I



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1 would also add, Judge, statements that the defendant made  
2 during an interview with federal investigators back in March of  
3 2022.

4 THE COURT: So, Mr. Gentile, you told me that the  
5 parties had discussed a schedule for trial, and what is the  
6 proposal?

7 MR. GENTILE: I'm sorry, Judge. We didn't specify an  
8 actual date. We were speaking more along the lines of how long  
9 the defense would need for reviewing discovery, and then  
10 possible dates after that.

11 As far as the government's concerned, we are ready to  
12 proceed to trial as soon as after discovery is reviewed and  
13 motions are made.

14 THE COURT: Thank you.

15 So can you consult with Mr. Kluger now, and give me a  
16 month for a trial date?

17 MR. GENTILE: Sure.

18 MR. KLUGER: Judge, can we get a sense from the Court  
19 what the Court was thinking, so we have kind of a benchmark?

20 THE COURT: Well, Mr. Kluger, I'll let you figure that  
21 out. I try to accommodate anything that's reasonable that  
22 counsel asks, I'll try to accommodate.

23 MR. KLUGER: Thank you, Judge.

24 THE COURT: Counsel.

25 MR. GENTILE: Your Honor, we have conferred. The

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1 parties would suggest early 2024 sometime? January?

2 THE COURT: So I have a two-week criminal trial  
3 starting January 16. Of course it's impossible to know if that  
4 will go forward. I can start this case on January 2nd, or  
5 January 9th, or January 30th.

6 MR. GENTILE: January 2nd, or January 9th works for  
7 the government, Judge.

8 THE COURT: Mr. Kluger?

9 MR. KLUGER: The 9th is preferable, but I don't know  
10 what --

11 THE COURT: Great.

12 MR. KLUGER: All right.

13 THE COURT: Mr. Kluger, since this trial is set for  
14 January, and I want to give you a chance to focus on the  
15 discovery material for as long as possible, and I'm expecting  
16 the government will assist you by pointing to those portions of  
17 the evidentiary record that they think are most relevant to  
18 your client -- you'll have it all, but they'll I'm sure assist  
19 you in speeding that review to the extent they can. So I'm  
20 going to suggest a motion schedule that's a bit tighter than I  
21 would otherwise suggest, with the understanding that you can  
22 write to me at any time and ask for a change to the schedule to  
23 bring motions more quickly.

24 So I'm going to suggest that defense motions be due  
25 November 17, government's response will be due December 1, and

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1 that will give us an opportunity for any hearing, if one is  
2 necessary at some point that's convenient to one and all in  
3 December.

4 So, Mr. Kluger, I've been handed a financial  
5 affidavit. I'm going to ask your assistance here, since this  
6 is not something I normally handle myself. It's usually  
7 handled by a magistrate judge. I believe it's appropriate for  
8 me to place the defendant under oath with respect to the  
9 information on the financial affidavit, and review it, and  
10 approve it or not as appropriate.

11 MR. KLUGER: Yes, Judge. That's correct.

12 THE COURT: Does your client need to see the financial  
13 affidavit again to swear to its truth?

14 MR. KLUGER: No, your Honor. We reviewed it carefully  
15 already this morning.

16 THE COURT: So, Ms. Mestre, please stand.

17 Please raise your right hand.

18 Do you solemnly swear that the answers you are about  
19 to give to me with respect to the financial affidavit will be  
20 true to the best of your knowledge?

21 THE DEFENDANT: I do, your Honor.

22 THE COURT: Do you swear to the truth of the contents  
23 contained in your financial affidavit that was signed today?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Thank you. You may be seated.

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1 I have reviewed this, and I approve it.

2 MR. KLUGER: Thank you, Judge.

3 THE COURT: Mr. Kluger, any objection to an exclusion  
4 of time to until our trial date of January 9?

5 MR. KLUGER: No, Judge, not with the fact that I need  
6 to review the voluminous discovery in this case, have  
7 conversations with the government, as well as with my client  
8 regarding any possible disposition, so we would consent to the  
9 adjournment.

10 THE COURT: I'm going to exclude time under the Speedy  
11 Trial Act from today until our trial date of January 9, 2024.  
12 It will permit the defendant and her counsel to review the  
13 discovery materials. If the defendant wishes to plead guilty,  
14 it will give counsel an opportunity to discuss that disposition  
15 with each other. If the defendant prefers to proceed to trial,  
16 it will give her an opportunity, through counsel, to make  
17 motions, to have those motions decided, and to have everyone  
18 prepare for the January trial. I make this exclusion pursuant  
19 to Title 18, United States Code section 3161(h)(7)(A).

20 Now, I want to advise you, Ms. Mestre, that the trial  
21 date you just selected is firm. It will not move. If you come  
22 into funds to retain counsel or if you decide to change  
23 appointed counsel, you should make that application sooner,  
24 rather than later, so that any incoming attorney has an  
25 opportunity to be prepared for trial.

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Do you understand what I just said, Ms. Mestre?

THE DEFENDANT: Yes, ma'am.

THE COURT: So I think the only thing further that I need to do is to set a schedule for submission of expert reports, and I'm going to have those expert reports due December 22.

Mr. Gentile, anything else we need to do except bail?

MR. GENTILE: No, your Honor.

THE COURT: Thank you.

Mr. Kluger, anything else, except bail issues?

MR. KLUGER: I don't -- other than bail, Judge, I think we've covered everything.

THE COURT: Good. So let's turn to the issue of bail. I think the pretrial services officer is here. I have a letter from the government with today's date, and I understand from that letter that there is a proposal that the defendant be released on bail pursuant to the terms described in that letter. I also have the pretrial services report, which has slightly different recommendations for release.

The government's proposal is a \$250,000 personal recognizance bond, cosigned by two financially responsible people; and it's secured by real property, which can include the defendant's interest in that real property; travel restrictions to the Southern and Eastern Districts of New York; the surrender of all travel documents with no new applications;

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1 supervision by pretrial services. The pretrial services office  
2 has that the defendant is not to possess a firearm, destructive  
3 device, or other dangerous weapon; and that the defendant is to  
4 have no contact with any alleged co-conspirators, victims, or  
5 witnesses outside of the presence of counsel.

6 So that's the proposal or the combination of the two  
7 proposals that I have.

8 Anything else, Mr. Gentile?

9 MR. GENTILE: No, your Honor.

10 The only thing that we would draw the Court's  
11 attention to is the condition provided by pretrial services  
12 regarding no contact with witnesses. We are under the  
13 understanding that defendant maintains contact with several of  
14 her law enforcement colleagues from the 52nd Precinct. We  
15 would request that that no contest rule extend to anybody who  
16 she worked with in the 52nd Precinct.

17 THE COURT: So I'm going to ask counsel to respond to  
18 the following: That the defendant not have any contact with  
19 any current or former employee of the NYPD, other or outside  
20 the presence of counsel. So, it's broader than the  
21 government's request.

22 Mr. Kluger, any objection?

23 MR. KLUGER: If I could have a moment to speak?

24 THE COURT: Yes.

25 MR. KLUGER: Okay. We have -- there's no objection to

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1 that condition, Judge.

2 THE COURT: Thank you.

3 With respect to the cosigners, is there an agreement  
4 between the parties of how long the defendant has in order to  
5 obtain those cosigners?

6 MR. KLUGER: I think we had discussed, Judge, that  
7 we'll have until next -- that defendant will be released on her  
8 own signature today, and that we'll have until next Friday to  
9 secure the paperwork, the house, and to secure the other two  
10 financially responsible cosigners.

11 THE COURT: Okay.

12 MR. KLUGER: I don't know the date off the top of my  
13 head.

14 THE COURT: That would be the 25th.

15 MR. KLUGER: Correct.

16 THE COURT: So I'm going to give this form, the bail  
17 disposition sheet, to counsel to review, and the pretrial  
18 services officer.

19 I forgot to advise the defendant of her rights if she  
20 hasn't been presented. So, Counsel, when you're done, I need  
21 to do that.

22 Counsel, any request for amendments?

23 MR. KLUGER: Your Honor, the only thing we would draw  
24 the Court's attention to is the provision that prohibits the  
25 defendant's contact with present or former members of the NYPD.

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1 It's our understanding that the defendant's partner is a former  
2 member of the NYPD, so we would not expect that prohibition to  
3 extend to her partner with whom she resides.

4 THE COURT: What is the last name of that person?

5 MR. KLUGER: Burke, Timothy Burke.

6 THE COURT: B-u-r --

7 MR. KLUGER: K-e. Burke. Timothy Burke.

8 THE COURT: Thank you.

9 I'm going to ask the defendant to stand, so I can  
10 advise her of her rights.

11 You have the right to remain silent.

12 You are not required to make any statements.

13 Anything that you do say can be used against you.

14 Even if you have made any statements to the  
15 authorities, you need not make any further statements.

16 Do you understand these rights?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: You have the right to be represented by  
19 counsel during this court proceeding, any future court  
20 proceedings, and any time you are questioned by the  
21 authorities.

22 If you cannot afford an attorney, an attorney will be  
23 appointed to represent you.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.



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1 THE COURT: You may be seated.

2 Anything further, counsel?

3 MR. GENTILE: Nothing from the government, your Honor.

4 MR. KLUGER: Nothing from the defense, Judge. Only to  
5 note that we turned over Ms. Mestre's passport to pretrial  
6 already, so that condition has been resolved.

7 THE COURT: Thank you all.

8 MR. KLUGER: Thank you, Judge.

9 (Adjourned)

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